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ALEXANDER L. STEVAS,
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No. 82-1702

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ROBERT L. STEVENS,

Petitioner,

vs.

GATEWAY TRANSPORTATION COMPANY and LOCAL 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Respondents.

—Consolidated With—

AIELT EVANS,

Petitioner,

vs.

MAISLIN TRANSPORT, LTD. (formerly GATEWAY TRANSPORTATION COMPANY, INC.) and LOCAL UNION 710 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. In a case involving the dismissal of employees, where suit follows, and the statute of limitations is an issue, is the statement of the Supreme Court in *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56, 64 that "obviously, if New York had adopted a specific 6-year statute of limitations for employee challenges to awards of a joint panel or similar body, we would be bound to apply that statute under the reasoning of *Hoosier Cardinal*" merely *dictum*, as stated by the Seventh Circuit in the decision in the case at bar (pg. 8 of opinion, Appendix C),[1] or does the statement establish a rule of law governed by *stare decisis*?

2. Where the Illinois statute of limitations governing such awards was enacted in 1872, and remained in force, and was re-enacted *verbatim* in 1961,[2] setting a 5 year statute of limitations for vacating an arbitration award, did not the re-enactment in 1961 result in the Illinois statute fitting hand in glove with section 301(a) of the Labor Management Relations Act of 1947 (29 USCS §185[a])[3] ?

3. Where Illinois had in force two statutes of limitations governing vacation of an arbitration award, and one of the statutes contained exclusions which made it inapplicable to the case at bar, but the other was clearly applicable, does not the decision of the Supreme court in *Mitchell*, cited in question one above, require that the specific and applicable state statute be applied?

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[1] Appendix C (pg. 14a).
[2] Appendix G (pg. 22a).
[3] Appendix E (pg. 19a).

4. Did the Seventh Circuit err in stating on page 9 of the opinion,[4] "In the second place, the Supreme Court did not decide in *Mitchell* whether federal courts are bound to borrow state statutes of limitations in actions such as this"?

5. Did not the Seventh Circuit err in stating on page 10 of the opinion[5] that the suits were untimely under Section 10(b) of the National Labor Relations Act,[6] which is limited in its application, and does not apply to cases involving discharge of a single employee?

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[4] Appendix C (pg. 15a).

[5] Appendix C (pg. 16a).

[6] 29 U.S.C. § 160, Appendix H.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To The Justices Of The Supreme Court Of The United States:

The petitioners, Robert L. Stevens and Aielt Evans, whose cases were consolidated on appeal to the Seventh Circuit, respectfully pray that a Writ of Certiorari issue to review the decision and order of the United States

Court of Appeals for the Seventh Circuit, affirming summary judgments for the defendants which were entered by the United States District Court for the Northern District of Illinois, Eastern Division.

The petitioners, Robert L. Stevens and Aielt Evans were dock employees for Gateway Transportation Company, which later became Maislin Transport, Ltd. There was a collective bargaining agreement between Gateway and Local 710 of the International Brotherhood of Teamsters.

Stevens was discharged for failure to submit to a blood alcohol test, and, on a different date, Evans was discharged for alleged intoxication on the job.

Purported hearings were held before a joint employer-union committee, and the finding was against the petitioners. Nearly two years later each of the petitioners filed suits in the Circuit Court of Cook County, Illinois, attacking the decisions of the joint committees, naming the employer and the union as defendants, asking reinstatement and damages.

The defendants removed the cases to the U.S. District Court, Northern District of Illinois. The defendants filed motions for summary judgment in the District Court, and summary judgments were entered in favor of Gateway and the Union.

The United States Court of Appeals for the Seventh Circuit affirmed the District Court on the only question presented, viz., were the suits barred by the Illinois 90 day statute of limitations?

Petitioners' Petition For Rehearing was denied on January 20, 1983.

OPINIONS BELOW

In the Stevens case, the District Judge filed a slip opinion, a copy of which is attached hereto as Appendix A.

In the Evans case, the District Judge filed a memorandum order, a copy of which is attached hereto as Appendix B.

The opinion of the Seventh Circuit Court is attached hereto as Appendix C, and the order denying rehearing is attached hereto as Appendix D.

JURISDICTION

The United States Court of Appeals for the Seventh Circuit consolidated the Stevens and Evans cases and affirmed the District Court's dismissal of both cases on summary judgment. The decision was entered on December 22, 1982. The Petition for Rehearing was denied on January 20, 1983.

The jurisdiction of this Court rests on 28 U.S.C. §1254(1).

STATUTES INVOLVED

Labor Management Relations Act, 29 U.S.C. 185(a) (referred to as Section 301[a])—(Appendix E)

Chapter 10, Sect. 112, Illinois Statutes—(Appendix F)

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STATEMENT OF THE CASE

The cases of Robert L. Stevens and Aielt Evans are nearly identical in the facts, and the cases were consolidated by the Seventh Circuit.

Both plaintiffs were employed by Gateway Transportation Company. Stevens was discharged for failure to submit to a blood alcohol test. Evans was discharged on charges of intoxication on the job. The discharges were on different dates.

Both filed a grievance with their union, Local 710 of the International Brotherhood of Teamsters (the union).

Stevens alleged in his complaint that the union representative stated that there was nothing that the union would or could do for the plaintiff, and that at the hearing which followed the union made no attempt to properly represent him.

Evans complained that at the hearing the union did not fairly represent him, and that he was not given a fair hearing by either the employer or the union.

The discharges were upheld, and both men filed suit in the Circuit Court of Cook County, Illinois.

Stevens filed his suit on May 10, 1979, two years after his discharge on May 10, 1977.

Evans filed his suit on April 20, 1981, nearly two years after his discharge on April 21, 1979.

BASIS OF FEDERAL JURISDICTION

The suits were filed against both Gateway and the union in the Circuit Court of Cook County, Illinois. On the motion of both defendants, the cases were transferred to the Federal Court, Northern District of Illinois, Eastern Division as being cases under Federal Statute, 29 U.S.C. 185(a).

Both defendants urged that the Illinois 90 day statute of limitations[9] barred the suits, which were filed nearly two years after the discharges. Stevens and Evans urged that the Illinois five year statute of limitations, which applies to awards of arbitration,[10] should be applied.

The employer and the union filed Motions For Summary Judgment, urging that the suits were barred by

[9] Appendix F (pg. 21a).

[10] Appendix G (pg. 22a).

the Illinois 90 day statute of limitations. Stevens and Evans urged that the Illinois statute which set the 90 day limitation period did not apply, due to the fact that the statute applies only to certain cases, none of which fall within the facts of this case, and that the 90 day statute specifically provides that the statute shall not apply to cases where there is an arbitration agreement, as there was here.

Stevens and Evans urged that there was an applicable Illinois Statute of Limitations, which applied to awards of arbitration,[11] which set the limitation period at five years, and that *United Parcel Service Inc. v. Mitchell*, 451 U.S. 56, 60 mandated that the applicable state statute of limitations should be applied.

The District Judges held in both cases that the Illinois 90 day statute of limitations applied, and granted summary judgment in favor of the employer and the union.[12]

The cases were appealed to the Seventh Circuit, which held that the Illinois 90 day statute of limitation applies, and affirmed the decision of the District Court.[13] A Petition For Rehearing was denied.[14]

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[11] Appendix G (pg. 22a).

[12] Stevens Opinion, Appendix A.
Evans Opinion, Appendix B.

[13] Seventh Circuit Opinion, Appendix C.

[14] Appendix D.

REASONS FOR GRANTING THE WRIT

THE SEVENTH CIRCUIT FAILED TO FOLLOW THE DECISION IN MITCHELL.

The decisions of the Supreme Court in *Hoosier Cardinal*[15] and *Mitchell*[16] on the statute of limitations controls here. We respectfully disagree with the Seventh Circuit, where they state on page 9 of the opinion, "In the second place, the Supreme Court did not decide in *Mitchell* whether federal courts are bound to borrow state statutes of limitations in actions such as this", and where the Seventh Circuit held on page 8 of the opinion that the holding in *Mitchell* that the state court would be bound by an applicable New York statute of limitations is *dictum*.

The opinion in *Mitchell* states otherwise. On page 60 of 451 U.S. the Supreme Court stated:

> "Congress has not enacted a statute of limitations governing actions brought pursuant to §301 of the LMRA. As this Court pointed out in *Auto Workers v. Hoosier Cardinal Corp.*, 383 U.S. 696, 704-705, 16 L. Ed. 2d 192, 86 S. Ct. 1107 (1966), "the timeliness of a §301 suit . . . *is to be determined, as a matter of federal law, by reference to the appropriate state statute of limitations.* Our present task is to determine which limitations period is "the most appropriate one provided by state law." *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 462, 44 L. Ed. 2d 295, 95 S. Ct. 1716 (1975)" (Emphasis supplied)

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[15] *International Union, United Automobile, Aerospace & Agricultural Implements Workers v. Hoosier Cardinal Corp.*, 383 U.S. 696.

[16] *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56, 60.

And on page 64, 451 U.S., the Supreme Court stated:

> "Obviously, if New York had adopted a specific 6-year statute of limitations for employee challenges to awards of a joint panel or similar body, we would be bound to apply that statute under the reasoning of *Hoosier Cardinal*."

Therefore the Seventh Circuit based its decision on an erroneous interpretation of *Mitchell* when the court stated at page 9 of the opinion, "In the second place, the Supreme Court did not decide in *Mitchell* whether federal courts are bound to borrow state statutes of limitations in actions such as this."

Borrowing state statutes in Section 301 cases[17] is a long established rule. The Seventh Circuit so held and was affirmed in *Hoosier Cardinal*,[18] and the Supreme Court affirmed in *Mitchell*. In that case the Seventh Circuit and the Supreme Court affirmed the application of an Indiana six year statute of limitations in a Section 301 action.

Hoosier Cardinal also overrules the argument that using a statute of limitations which runs into years would tend to disrupt the goals of national labor policy by noting that "statutes of limitations come into play only when these processes have already broken down. Lack of uniformity in this area is therefore unlikely to frustrate in any important way the achievement of any significant goal of labor policy." (383 U.S. 702).

In cases such as the cases at bar, where an individual workman has a grievance, and the union fails to properly represent him, and the individual sues both the

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[17] *Labor Management Relations Act* (29 USCS 185 [a]).

[18] *International Union, etc. v. Hoosier Cardinal Corporation*, 383 U.S. 696.

employer and the union, such individual action could not in any way frustrate the goals of any national labor policy. The union and the employer are "sitting on the same side of the table," opposing an individual. There could be no strike, for the union would have to call the strike—and the union is on the employer's side.

Hoosier Cardinal holds that since no federal provision governs in Section 301 cases, the timeliness is to be determined, *as a matter of federal law*, by reference to the appropriate state statute of limitations. (383 U.S. 704, 705).

THE SEVENTH CIRCUIT APPLIED THE WRONG ILLINOIS STATUTE OF LIMITATIONS.

Illinois statutes, Chapter 10, Section 112 is not the applicable statute, for it applies only to five specific instances:

> **§ 112. Vacating an award**
>
> (a) Upon application of a party, the court shall vacate an award where:
>
> (1) The award was procured by corruption, fraud or other undue means;
>
> (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any one of the arbitrators or misconduct prejudicing the rights of any party;
>
> (3) The arbitrators exceeded their powers;
>
> (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 5,[1] as to prejudice substantially the rights of a party; or
>
> (5) There was no arbitration agreement and the issue was not adversely determined in proceedings

under Section 2[2] and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

None of the above appear in the case at bar. Especially, as stated in subsection (5), an award can be vacated only "where there was no arbitration agreement." There was an arbitration agreement in the case at bar.

Therefore, Section 112 is inapplicable, and the mandate of *Mitchell*[19] that a specific and applicable statute of limitations must be applied is not followed.

But Illinois *does have* an applicable and specific statute of limitations.

Chapter 83, Sect. 16 of Illinois statutes has in its title a reference to arbitration awards, and sets a five year limitation period:

> **§ 16. Oral contracts—Arbitration awards—Damage to property—Possessory actions—Civil actions**
>
> Except as provided in Section 2-725 of the "Uniform Commercial Code", enacted by the Seventy-second General Assembly,[1] actions on unwritten contracts, expressed or implied or on awards of arbitration, or to recover damages for an injury done to property, real or personal, or to recover the possession of personal property or damages for the detention or conversion thereof, and all civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued. 1872, April 4, Laws 1871 72, p. 556, § 15: 1961, July 31, Laws 1961, p. 2304, § 1.

[19] 451 U.S. 64.

Therefore, if *Mitchell* is to be followed, the specific state statute of limitations must be applied.

The decision of the Seventh Circuit fails to follow the doctrines of *Mitchell* and *Hoosier Cardinal* in that the Seventh Circuit states on page[20] of the opinion that *Mitchell* does not decide whether federal courts are bound to borrow state statutes of limitations in cases such as this.

Mitchell cites and relies on *Hoosier Cardinal*. *Hoosier Cardinal* holds that *as a matter of federal law* the state statute of limitations must be followed. (383 U.S. 704, 705).

Now which Illinois statute of limitations must be applied? Despite the conclusions of the Seventh Circuit referred to above, the court follows Section 112 of Chapter 10, Illinois Statutes.[21] This statute is inapplicable in a case where the record shows throughout that there was a collective bargaining and arbitration agreement. The statute clearly states:

> (e) Nothing in this Section or any other Section of this Act shall apply to the vacating, modifying, or correcting of any award entered as a result of an arbitration agreement which is a part of or pursuant to a collective bargaining agreement; and the grounds for vacating, modifying, or correcting such an award shall be those which existed prior to the enactment of this Act.

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[20] Appendix C (pg. 15a).

[21] Appendix F (pg. 21a).

SECTION 10(b) OF THE NATIONAL LABOR REI A-TIONS ACT DOES NOT APPLY HERE.

Both of these cases involve the alleged wrongful discharge of a single dock worker and the failure of the union to properly represent him at a hearing before the joint committee. Section 10(b) of The National Labor Relations Act (29 U.S.C. Sect. 160) does not apply to such cases. The Supreme Court and the Seventh Circuit have so held.

In *Chauffeurs, Teamsters, Warehousemen and Helpers v. Jefferson Trucking Company*, 628 F.2d 1023, (7th Cir. 1980), a complaint to enforce an arbitration award, the Seventh Circuit held at page 1025 as follows:

> "Since the decision of the Supreme Court in *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957), it is settled that in the field of labor arbitration the governing law is a body of federal law to be fashioned by the federal courts under Section 301(a) of the LMRA."

In the *Textile Workers* case, cited above, the Supreme Court, in stating the rule, referred to the history of Section 301 at 1 L.Ed.2d 978 as follows:

> "The bills, as they passed the House and the Senate, contained provisions which would have made the failure to abide by an agreement to arbitrate an unfair labor practice. (Citations omitted.) This feature of the law was dropped in Conference. As the Conference Report stated, 'Once parties have made a collective bargaining contract, the enforcement of that contract should be left to the usual processes of the law *and not to the National Labor Relations Board.*'" (Emphasis supplied.)

Section 10(b) provides for a hearing before the National Labor Relations Board in unfair labor practices.

In *Textiles Workers* the Supreme Court holds that failure to arbitrate is not an unfair labor practice. The Seventh Circuit agreed in *Chauffeurs.*

THE PROVISIONS OF SECTION 10(b) DO NOT COVER CASES WHERE AN EMPLOYEE WAS DISCHARGED DUE TO AN ACCUSATION OF INTOXICATION ON THE JOB.

We fail to find any case where this point has been raised, and, therefore, the point has not been passed on. A digest of Section 10(b) (29 U.S.C. 160) will prove our point. A digest of the section is as follows:

> **"Subsection 160. Prevention of unfair labor practices—Powers of Board generally**
>
> (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in *any unfair labor practice (listed in section 158 of this title)* affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise. (Emphasis supplied.)
>
> . . . . .
>
> **Complaint and notice of hearing; answer; court rules of evidence applicable**
>
> (b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint . . .

Provided that no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board . . ."

Now Section 10(b), by its provisions, limits the remedies to the unfair labor practices enumerated in Section 158. None of the unfair practices apply to discharges similar to those of the petitioners in the case at bar. A digest of Section 158 will prove this point. A digest of the section is as follows:

"Subsection 158. Unfair labor practices

(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. . . .

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this subchapter.

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title. . . .

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section. . . .

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 159(a) of this title;

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike. . . .

In the foregoing Section reference is made to Section 157. Section 157 is as follows:

"Subsection 157. Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title."

None of the foregoing sections deal with wrongful discharge for alleged intoxication on the job.

SECTION 10(b) WAS PASSED IN 1935.

SECTION 301, PASSED IN 1947, WAS DESIGNED TO PROVIDE FOR GRIEVANCES NOT ENUMERATED IN SECTION 10(b).

A digest of Section 301 (29 U.S.C. 185) is as follows:

"Subsection 185. Suits by and against labor organizations. Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States.

Jurisdiction

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal offices, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members."

Section 10(b) does not give any of the rights and remedies contained in Section 301, but limits its application to cases where (1) there has been interference with the right to organize, (2) there has been discrimination, or (3) there has been a refusal to bargain collectively. Section 10(b) does not, therefore, apply to this case.

CONCLUSION

For the foregoing reasons, Petitioners respectfully ask this Honorable Court to grant its Writ, directed to the United States Court of Appeals for the Seventh Circuit, and, upon doing so, to reverse the decisions of that Court and to remand these cases for trial.

Respectfully submitted,

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APPENDIX A

Judgment of the United States District Court
For the Northern District of Illinois
Eastern Division—Stevens Case

ROBERT L. STEVENS,

Plaintiff,

No. 79 C 2228 vs.

GATEWAY TRANSPORTATION COMPANY and LOCAL 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Defendants.

Decision of Judge Prentice H. Marshall,
District Judge in *Stevens* case

"Plaintiff challenges, in this action, the decision of the arbitrator upholding his dismissal as an employee of defendant Gateway. Defendants claim the action is time-barred. In this suit, we must select the most appropriate statute of limitation in light of the federal policies involved. *United Parcel Service, Inc. v. Mitchell*, 101 S. Ct. 1559, 1562-63 (1981). Plaintiffs seek to have us apply the five year statute of limitation contained in Ill. Rev. Stat. ch. 83, §16. However, a five year statute of limitation would subvert the federal labor policy favoring speedy resolution of labor disputes, by allowing the arbitral process to be challenged after long periods of time have elapsed. *See* 101 S. Ct. at 1564-65; *Davidson v. Roadway Express, Inc.*, 650 F.2d 902, 903-04 (7th Cir. 1981); *Chauffeurs, Teamsters, Warehousemen & Helpers, Local Union 135 v. Jefferson Trucking Co.*, 628 F.2d 1023, 1027 (7th Cir. 1980), *cert. denied*, 449 U.S. 1125 (1981). "State

limitations periods will not be borrowed if their application would be inconsistent with the underlying policies of the federal statute." *Occidental Life Insurance Co. v. EEOC*, 432 U.S. 355, 367 (1977). Therefore, we will not apply the five year statute to this action.

Since plaintiff's action is time-barred under either statute, we need not decide whether 29 U.S.C. §160(b) (6 months) or Ill. Rev. Stat., ch. 10, §112(b) (90 days) is applicable to this action.

Defendants' motions for summary judgment are granted. Judgment to enter in favor of defendants."

APPENDIX B

Judgment of the United States District Court For the Northern District of Illinois, Eastern Division—Evans Case

AIELT EVANS,

Plaintiff,

No. 81 C 2753 vs.

MAISLIN TRANSPORT, LTD. (formerly Gateway Transportation Company, Inc.) and LOCAL UNION 710 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Defendants.

Memorandum Order of Judge Edwin A. Robson, District Judge, in *Evans* case

This cause is before the court on the motions by both defendants to dismiss or for summary judgment. For the reasons hereinafter stated, the motions shall be granted.

The plaintiff Aielt Evans was employed at Gateway Transportation Co., Inc. while a member of Local 710 of the International Brotherhood of Teamsters. He was discharged for being intoxicated on the job on April 21, 1979. He had worked seven hours of his eight-hour shift. The level of alcohol in his blood stream was indicative of intoxication, however, the Clearing House Industrial Clinic report stated "there is a wide range of tolerance so that in some individuals intoxication may be reached at lower or higher levels."

Evans filed a grievance with his Union on May 1, 1979. On May 31, 1979, a hearing was held before a joint com-

mittee and his discharge was upheld. On April 20, 1981, one day short of two years after his discharge, Evans filed a complaint alleging his present claim for wrongful discharge against Maislin Transport Ltd., the successor corporation to Gateway Transportation Co., Inc. and his Union, Teamsters Local 710.

Jurisdiction is asserted under § 301 of the Labor Management Relations Act and is undisputed.

Both defendants seek dismissal or summary judgment on the grounds that the action was filed well beyond the applicable 90-day statute of limitations. Evans contends that his complaint is timely because it was filed within 5 years of the time his cause arose.

In *United Parcel Service, Inc. v. Mitchell*, ... U.S. ....., 101 S.Ct. 1559 (1981), the Supreme Court held that a suit alleging a breach of the duty of fair representation after a committee has upheld a discharge under a collective bargaining agreement is "analogous to an action to vacate an arbitration award." 101 S.Ct. at 1564. Thus, it applied a 90-day New York statute of limitations to bar a section 301 action brought by the employee. *Accord, Davidson v. Roadway Express, Inc.*, 650 F.2d 902 (7th Cir. 1981). (Indiana 90-day statute).

Illinois has a similar 90-day statute of limitations for suits to vacate arbitration awards. Ill. Rev. Stat. ch. 10, § 112(b). Both defendants urge that this statute applies in this action and bars the complaint.*

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* If a different limitations period were applicable to the action against the union, it would be that appearing in § 10 of the National Labor Relations Act, 29 U.S.C. § 160(b). *Davidson v. Roadway Express, Inc.*, 650 F.2d 902 (7th Cir. 1981). See *Mitchell, supra* at 1565-70, (Blackman, J. concurring and Stevens, J. concurring in part and dissenting in part). Section 10 sets a limitation of six months. This action is also barred if section 10 applies because it was filed 18 months after this limitations period elapsed.

Evans contends that the most analogous statute of limitations is the statute contained in Ill. Rev. Stat. ch. 83, § 16 which provides that "an action on awards of arbitration . . . shall be commenced within 5 years next after the cause of action accrued." Evans urges that the *Mitchell* and *Davidson* decisions are distinguishable because Illinois, unlike New York and Indiana, has two statutes of limitations governing awards. Evans further urges that the longer statute is more analogous in this action due to the fact that the grounds raised for reviewing his grievance arbitration would not support a suit to vacate it.

Evans' contention ignores the express holding of *Mitchell, supra.* The Court analogized the fair representation action to vacation actions because "the employee must first establish a flaw in the binding grievance procedure before being entitled to reach the merits of his contract claims." *Id.* at 1564. *See also, Davidson, supra* at 903. The analogy was also supported by the federal policy of rapid resolution of labor disputes. *Id.* at 904. This policy is not promoted in the case of the 5-year statute of limitations. The court concludes that the 90-day statute of limitations is the most directly analogous one. *Accord, Stevens v. Gateway Transportation Co.*, No. 79 C 2288 (N.D. Ill., Marshall, J., Sept. 22, 1981, and Order of Jan. 13, 1982). *Bigbie v. Local 142, International Brotherhood of Teamsters*, No. 81 C 4507 (N.D. Ill., Shadur, J., December 8, 1981); *Essary v. Railroad Yardmasters of America*, No. 77 C 4651 (N.D. Ill. Bua, J., December 14, 1981); *Collins v. Car Carriers, Inc.*, No. 80 C 2729 (N.D. Ill. Bua, J., December 17, 1981).

The action by the employee against the employer is derivative of the action for breach of the fair representation duty. *Mitchell, supra* at 1563. Therefore no action can be maintained against the employer if there is no action available against the Union. This is the case here because Evans' action against the Union and his employer was not filed within the applicable 90-day limitations period. *Accord, Bigbie, supra.*

For the reasons stated, it is therefore ordered that the motions to dismiss or for summary judgment by the defendants Maislin Transport, Ltd. and Local 710, International Brotherhood of Teamsters, shall be and the same are hereby, granted.

/s/ Edwin A. Robson
Senior Judge

February 16, 1982.

APPENDIX C

Decision of Seventh Circuit, Consolidated Appeals

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 82-1222

ROBERT L. STEVENS,

Plaintiff-Appellant,

v.

GATEWAY TRANSPORTATION COMPANY, and LOCAL 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 79 C 2228—**Prentice H. Marshall**, *Judge.*

No. 82-1426

AIELT EVANS,

Plaintiff-Appellant,

v.

MAISLIN TRANSPORT, LTD. (formerly GATEWAY TRANSPORTATION COMPANY, INC.) and LOCAL UNION 710 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 81 C 2753—**Edwin A. Robson**, *Judge.*

ARGUED SEPTEMBER 29, 1982—DECIDED DECEMBER 22, 1982

Before CUMMINGS, *Chief Judge*, COFFEY, *Circuit Judge*, and HILL, *Senior District Judge.**

CUMMINGS, *Chief Judge*. These appeals involve the same issue and were consolidated for oral argument and disposition.

The material facts in each are similar. On April 21, 1979, plaintiff Evans was discharged from employment with Gateway Transportation Company ("Gateway") for being intoxicated on the job. He filed a grievance with his union, Local 710 of the International Brotherhood of Teamsters ("the Union"), on May 1, 1979. As provided for in the collective bargaining contract between Gateway and the Union, Evans's grievance was submitted to arbitration and on May 31, after a hearing before a joint employer-union committee ("Joint Committee"), his discharge was upheld. On April 20, 1981, some twenty-two months after the Joint Committee's decision, Evans filed suit against Gateway and the Union, charging (1) that the Union did not fairly represent him at his arbitration hearing, and (2) that Gateway's discharge of him was unlawful. Evans sought $40,000 in damages from the Union and reinstatement and back pay from Gateway. On February 16, 1982, District Judge Robson dismissed both claims as time-barred under Illinois' 90-day statute of limitations governing suits to vacate arbitration awards, Ill. Rev. Stat. ch. 10, § 112(b) (1981). In a footnote Judge Robson added that if the 90-day limitation period were not applicable, the 6-month period of limitations in Section 10 of the National Labor Relations Act, 29 U.S.C. § 160, would control and also bar Evans's suit.

Plaintiff Stevens was discharged from employment with Gateway for failure to submit to a blood alcohol test. Stevens filed a grievance with the Union and after a hearing before the Joint Committee his discharge was also upheld. Some twenty-three months after the Joint Committee's ruling, Stevens brought an action against

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* The Honorable Irving Hill, Senior District Judge for the Central District of California, is sitting by designation.

Gateway and the Union identical in all relevant respects with that of Evans. On January 13, 1982, District Judge Marshall handed down a minute order granting defendants' motions for summary judgment on the ground that Stevens's action was time-barred under either the 90-day Illinois statute of limitations or the 6-month federal statute of limitations governing unfair labor practice claims.

On appeal both plaintiffs argue that the district courts below should have applied Illinois' 5-year statute of limitations governing miscellaneous civil actions, including actions "on awards of arbitration." Ill. Rev. Stat. ch. 83, § 16 (1981). For the reasons that follow we affirm both judgments.

Plaintiffs do not argue that the district courts erred in looking to Illinois law to determine whether their claims were time-barred. In fact, they argue that the district courts were required to do so. They concede that the district courts properly characterized their claims against both the Union and Gateway as actions to vacate arbitration awards for purposes of deciding what Illinois statute of limitations to adopt as the federal standard.[1] But they argue only that the Illinois statute of limitations governing actions to vacate arbitration awards like those of the Joint Committee is not that adopted below.

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[1] Because plaintiffs herein concede that their claims against the Union are, in effect, attempts to vacate arbitration awards, the question presented in *Hall v. Printing & Graphic Arts Union, Local #3*, No. 82-1109, slip op. (7th Cir. Dec. 21, 1982)—whether an unfair representation suit against a labor union is more analogous to a common law tort claim than to an unfair labor practice claim under Section 10(b) of the National Labor Relations Act—is not before us. Plaintiffs in *Hall* argued that for the purpose of choosing a limitations statute, a damage claim against a union for breach of its fair representation duty is more analogous to a common law tort claim than to a suit to vacate an arbitration award or an unfair labor practice claim. We rejected that argument and applied the 6-month limitations rule in Section 10(b).

The district courts adopted Section 12(b) of Illinois' Uniform Arbitration Act. That Section provides as follows:

> An application [to vacate an arbitration award] under this Section shall be made within 90 days after delivery of a copy of the award to the applicant, except that if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known.

Ill. Rev. Stat. ch. 10, § 12(b) (1981). Section 12(e) of the same Act, however, provides that Section 12(b) shall not apply "to the vacating * * * of any award entered as a result of an arbitration agreement which is a part of or pursuant to a collective bargaining agreement." Plaintiffs argue that the Joint Committee's decisions are such awards, that their claims against both the Union and Gateway are, in effect, attempts to vacate those awards, and that the district courts were therefore forbidden by Section 12(e) from applying the 90-day limitations period of Section 12(b). Plaintiffs maintain that because of Section 12(e), the Illinois 90-day statute does not apply, and the district courts should have applied Illinois' 5-year statute governing actions "on awards of arbitration."

Implicit in plaintiffs' argument are three propositions: (1) Illinois courts would not in fact apply the 90-day limit in Section 12(b) to actions to vacate decisions by the Joint Committee; (2) federal courts may not do with Section 12(b) what Illinois courts would not do; (3) when measuring the timeliness of plaintiffs' suits, federal courts must do as Illinois courts would do. Though we have doubts about the first proposition,[2] we will assume its truth for

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[2] Plaintiffs cite no decisions in which an Illinois court declined to apply the 90-day statute to an action to vacate an arbitration award entered pursuant to a collective bargaining agreement. It is certainly conceivable that Illinois courts would apply the 90-day limit in Section 12(b) when, as here, the collective bargaining agreement that provides for arbitration

(Footnote continued on following page)

purposes of this appeal. We have no doubts, however, about the second and third propositions. Neither is true.

Plaintiffs' claims arise under federal, not state, law.[3] Their timeliness is thus a federal, not state, question. *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56, 60, quoting *International Union, United Automobile, Aerospace & Agricultural Implement Workers v. Hoosier Cardinal Corp.*, 383 U.S. 696, 704-705. Had Congress enacted a statute of limitations that expressly governed plaintiffs' claims we would be bound to apply it, not some statute enacted by the Illinois legislature. Plaintiffs' second proposition is therefore false unless timeliness of suit is magically transformed from a federal to a state question whenever a federal court borrows a state statute of limitations.

No such transformation occurs. That Congress has not enacted a statute of limitations expressly governing plaintiffs' claims does not mean that national interests are any less implicated by the choice of an appropriate

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[2] *continued*
does not specify a limitations period. See *Local 1020, United Brotherhood of Carpenters and Joiners v. FMC Corp.*, 658 F.2d 1285 (9th Cir. 1981), where Judge Walter Hoffman reasoned that a similar exception in Oregon's arbitration statute was intended only to allow parties to a collective bargaining agreement to agree upon their own limitation rules, not to prohibit courts from applying the limitations period in Oregon's arbitration statute when a collective bargaining agreement fails to specify a different period.

[3] Plaintiffs' claims against Gateway arise under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, which vests federal district courts with jurisdiction over a suit by an employee against his employer for breach of a collective bargaining agreement. Plaintiffs' claims against the Union arise under the National Labor Relations Act, 29 U.S.C. § 151 *et seq.*, which imposes upon labor unions a duty of fair representation, see *Electrical Workers v. Foust*, 442 U.S. 42, 46 n. 8; *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 563-564; *Vaca v. Sipes*, 386 U.S. 1; *Ford Motor Co. v. Huffman*, 345 U.S. 330, and affords employees the right to seek judicial redress for breaches of that duty, see *Vaca v. Sipes, supra.*

limitations period than if Congress had enacted such a statute. It simply means that the task of choosing a limitations period consistent with national interests devolves upon the federal courts. *Hoosier Cardinal, supra,* 383 U.S. at 701. Federal courts look to state law in fashioning appropriate limitations periods for suits like plaintiffs' not because principles of federalism require it, but because the "range of judicial inventiveness" in such matters is not, and should not be, unlimited. *Id.* at 701, quoting *Textile Workers v. Lincoln Mills,* 353 U.S. 448, 457. That range extends only so far as national interests require, and if state law is consonant with those interests and lack of uniformity in federal law would not threaten them, there is no need for a federal court to do more than adopt state law.

Plaintiffs would limit us further. They would prohibit us from applying a borrowed state statute of limitations differently than the state would apply it even at the expense of national interests. They would have us apply Illinois' 5-year statute because its 90-day statute supposedly does not by its terms expressly apply even though federal labor policy strongly favors the "relatively rapid disposition of labor disputes." *Mitchell,* 451 U.S. at 63, quoting *Hoosier Cardinal,* 383 U.S. at 707. We are not, however, bound by the letter of state limitation statutes to disserve the spirit of national labor policy. See *Occidental Life Insurance Co. v. EEOC,* 432 U.S. 355, 367; *Johnson v. Railway Express Agency,* 421 U.S. 454, 465. The Supreme Court recently held as much in *United Parcel Service, Inc. v. Mitchell, supra. Mitchell* involved a suit by a discharged employee against his local union and employer. The employee challenged the lawfulness of the discharge in a grievance proceeding before a joint committee of employer and union representatives and the committee upheld his discharge. Seventeen months later the employee filed suit under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a), alleging that the union had unfairly represented him during the arbitration proceeding and that his discharge was unlawful. Defendants argued that the suit was time-barred by

New York's 90-day statute of limitations for "application[s] to vacate or modify an [arbitration] award," N.Y. Civ. Prac. Law § 7511 (McKinney 1963). There was considerable doubt, however, whether New York courts would apply New York's 90-day statute of limitations to a suit by an employee to vacate an arbitration award. The Second Circuit declined to adopt the statute partly because it thought New York courts would not even entertain such a suit let alone measure its timeliness under a particular limitations rule. *Mitchell v. United Parcel Service, Inc.*, 624 F.2d 394, 398 (2nd Cir. 1980). The Supreme Court reversed, holding that the relevant consideration was not whether New York would in fact apply its statute to claims like Mitchell's but whether the kinds of claims to which it would apply its statute were "closely analogous" to Mitchell's. 451 U.S. at 61 n.3.

Plaintiffs herein do not argue that their claims are not "closely analogous" to those governed by Illinois' 90-day statute but merely that despite the analogousness, Illinois would not in fact apply its 90-day statute to them. That is, in essence, the same argument rejected by the *Mitchell* court. Many federal courts since *Mitchell* have also rejected this argument and borrowed state limitation statutes that did not by their terms apply to an action to vacate an arbitration award in a labor dispute. See, *e.g.*, *Local 1020, United Brotherhood of Carpenters and Joiners v. FMC Corp.*, 658 F.2d 1285, 1288-1292 (9th Cir. 1981); *Gardner v. Illinois Bell Telephone Co., Communications Workers of America-District 5*, No. 82-1097, slip op. at 3-4 (C.D. Ill. Sept. 30, 1982); *Madia v. Pacific Intermountain Express*, No. 81 C 360, slip op. at 3 (N.D. Ill. March 30, 1982); *Engelsberg v. Transcon Lines, Inc.*, 530 F. Supp. 628, 631-632 (W.D. Wash. 1982) (but declining to apply retroactively the *Mitchell* rule of decision); *Bigbie v. Local 142, International Brotherhood of Teamsters*, 530 F. Supp. 402, 405 n. 3 (N.D. Ill. 1981); *Scott v. Chrysler Corp.*, 107 LRRM 3086, 3088 and n. 2 (E.D. Mich. 1981). But see *Badon v. General Motors Corp.*, 679 F.2d 93, 98-99 (6th Cir. 1982). We see no reason to adopt

an approach more deferential to state law and less accommodative of federal interests in this case.[4]

In support of the third proposition, plaintiffs rely solely on a dictum in the *Mitchell* opinion: "Obviously, if New York had adopted a specific 6-year statute of limitations for employee challenges to awards of a joint panel or similar body, we would be bound to apply that statute under the reasoning of *Hoosier Cardinal.*" 451 U.S. at 64. Plaintiffs contend that Illinois' 5-year statute of limitations governing suits "on awards of arbitration" is such a statute and that *Mitchell* requires us to borrow it.

In the first place, the very sentence in the *Mitchell* opinion following that quoted above makes it plain that the 5-year state statute urged upon us here is a far cry from the type of "specific" statute the *Mitchell* Court had in mind. "[W]here generally state limitations periods were enacted prior to the enactment of § 301 by Congress in 1947, we are necessarily committed by prior decisional law to choosing among statutes of limitations none of which fit hand in glove with an action under § 301(a) of the LMRA." 451 U.S. at 64. Illinois' 5-year

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[4] Plaintiffs also argue that Illinois' 90-day rule does not apply to their claims because none of the five grounds identified in Section 12(a) of the Uniform Arbitration Act as sufficient to warrant a court's vacating an arbitration award are present here. That, of course, is just a weaker variation of the argument that a federal court may not borrow a state statute of limitations that does not in terms apply to the kind of suit before it. If a federal court is not prohibited from applying a borrowed state limitations statute to an allegedly expressly excepted claim, *a fortiori* it is not prohibited from applying it to an impliedly excepted claim.

This Court rejected this same argument *sub silentio* in *Davidson v. Roadway Express, Inc.*, 650 F.2d 902 (1981), for the Indiana statute (Ind. Code 34-4-2-13) also listed the same five grounds for vacating the award and none of them was involved in that case. Similarly, the 90-day New York statute for vacating awards (Section 7511(a) of the N.Y. Civ. Proc. Law (McKinney 1963)) was selected by the Supreme Court in *Mitchell, supra*, although the statute itself was limited to four other grounds (Section 7511(b)). 451 U.S. at 61 n. 3.

statute was enacted in 1872, sixty-three years before Congress passed the NLRA and seventy-five before it passed the LMRA.[5] It governs a host of actions, including "actions on unwritten contracts, expressed or implied, or *on awards of arbitration*, or to recover damages for an injury done to property, real or personal, or to recover possession of personal property or damages for the detention or conversion thereof, and all civil actions not otherwise provided for * * * " (emphasis supplied). Ill. Rev. Stat. ch. 83 § 16 (1981). But it nowhere refers to actions to vacate arbitration awards. If indeed there are state statutes of limitations so well tailored to fit federal causes of action that we are bound to adopt them, this is surely not one of them.

In the second place, the Supreme Court did not decide in *Mitchell* whether federal courts are bound to borrow state statutes of limitations in actions such as this. The Court expressly reserved judgment on that issue and decided only which of two New York statutes a federal court must apply if it chooses to apply one of them in a suit by an employee under Section 301 of the LMRA. 451 U.S. at 60 n. 2. Rather than the 5-year Illinois statute suggested by plaintiffs, the 6-month limitations period contained in Section 10(b) of the National Labor Relations Act better serves the federal policy of quickly resolving labor disputes,[6] see *Weller v. G.M.W.*, No. 82 C

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[5] Plaintiffs argue that the statute nonetheless fits hand in glove with their claims because the Illinois legislature readopted it in 1961. Plaintiffs cite nothing, however, that would support the inference that the 1961 Illinois legislature readopted the language of the 1872 Act with an eye toward accommodating federal labor policy that evolved during the 1940's. Absent at least some such evidence, we think the simple legislative act of re-adoption insufficient to breathe modern federal life into an ancient state statute that does not even refer to actions to vacate awards.

[6] Section 10(b) provides in pertinent part that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the [unfair labor practice] charge with the [National Labor Relations] Board * * *." 29 U.S.C. § 160(b).

1906, slip opinion (N.D. Ill. Sept. 27, 1982); *Collins v. Car Carriers, Inc.*, 536 F. Supp. 776 (N.D. Ill. 1982); *Kaftantzis v. D & L Transport Co.*, 531 F. Supp. 566 (N.D. Ill. 1982), and plaintiffs' claims are at least as analogous to unfair labor practice claims under the National Labor Relations Act as to actions "on awards of arbitration" under Illinois law, see *Kesner v. NLRB*, 532 F.2d 1169, 1173-1174 (7th Cir. 1976); *Miranda Fuel Co.*, 140 N.L.R.B. 181 (1962), enforcement denied, 326 F.2d 172 (2d Cir. 1963). Since plaintiffs' suits were commenced more than 6 months after the Joint Committee's decisions, they would be untimely under Section 10(b) as well.

Judgments affirmed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX D

Order of the United States Court of Appeals For the Seventh Circuit January 20, 1983, Denying Rehearing

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

January 20, 1983

Before

Hon. WALTER J. CUMMINGS, *Chief Judge*
Hon. JOHN L. COFFEY, *Circuit Judge*
Hon. IRVING HILL, *Senior District Judge**

ROBERT L. STEVENS,

Plaintiff-Appellant,

No. 82-1222 v.

GATEWAY TRANSPORTATION CO. and LOCAL 710, INT'L BROTHERHOOD OF TEAMSTERS,

Defendants-Appellees.

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* The Honorable Irving Hill, Senior District Judge for the Central District of California, is sitting by designation.

AIELT EVANS,

Plaintiff-Appellant,

No. 82-1426 vs.

MAISLIN TRANSPORT, LTD. (formerly GATEWAY TRANSPORTATION COMPANY) and LOCAL 710, INT'L BRO. OF TEAMSTERS,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 81 C 2753—**Edwin A. Robson**, *Judge*

ORDER

On consideration of the petition for rehearing and suggestion for rehearing *en banc* filed in the above-entitled causes by plaintiffs-appellants, Robert L. Stevens and Aielt Evans, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

APPENDIX E

U.S. Labor Management Relations Act 29 U.S.C. 185(a), referred to as Section 301(a)

§ 185. Suits by and against labor organizations

Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in

which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

June 23, 1947, c. 120, Title III, § 301, 61 Stat. 156.

APPENDIX F

Illinois Statutes
Chapter 10, Section 112

§ 112. Vacating an award

(a) Upon application of a party, the court shall vacate an award where:

(1) The award was procured by corruption, fraud or other undue means;

(2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any one of the arbitrators or misconduct prejudicing the rights of any party;

(3) The arbitrators exceeded their powers;

(4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 5, as to prejudice substantially the rights of a party; or

(5) There was no arbitration agreement and the issue was not adversely determined in proceedings under Section 2 and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this Section shall be made within 90 days after delivery of a copy of the award to the applicant, except that if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known.

APPENDIX G

Illinois Statutes
Chapter 83, Section 16

§ 16. Oral contracts—Arbitration awards—Damage to property—Possessory actions—Civil actions

Except as provided in Section 2-725 of the "Uniform Commercial Code", enacted by the Seventy-second General Assembly,[1] actions on unwritten contracts, expressed or implied, or on awards of arbitration, or to recover damages for an injury done to property, real or personal, or to recover the possession of personal property or damages for the detention or conversion thereof, and all civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued. 1872, April 4, Laws 1871-72, p. 556, § 15; 1961, July 31, Laws 1961, p. 2304, § 1.

[1] Chapter 26, § 2-725.

APPENDIX H

Labor Management Relations Act
(Referred to as Section 10(b)) Title 29,
Section 160(a)(b)

§ 160. Prevention of unfair labor practices—Powers of Board generally

(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. . . .

Complaint and notice of hearing; answer; court rules of evidence applicable

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, ...

APPENDIX I

Labor Management Relations Act,
Title 29, Section 158

§ 158. Unfair labor practices

(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; . . . .

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; . . . .

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this subchapter;

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

No. 82-1702

Office-Supreme Court, U.S.
FILED
MAY 26 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ROBERT L. STEVENS,

Petitioner,

vs.

GATEWAY TRANSPORTATION COMPANY and LOCAL 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Respondents.

—Consolidated With—

AIELT EVANS,

Petitioner,

vs.

MAISLIN TRANSPORT, LTD. (formerly GATEWAY TRANSPORTATION COMPANY, INC.) and LOCAL UNION 710 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF RESPONDENT COMPANY IN OPPOSITION

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QUESTION PRESENTED

The Respondent Company adopts the statement of the Question Presented to the Court as set forth in the brief of Respondent Union in opposition.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ROBERT L. STEVENS,

Petitioner,

vs.

GATEWAY TRANSPORTATION COMPANY and LOCAL 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Respondents.

—Consolidated With—

AIELT EVANS,

Petitioner,

vs.

MAISLIN TRANSPORT, LTD. (formerly GATEWAY TRANSPORTATION COMPANY, INC.) and LOCAL UNION 710 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF RESPONDENT COMPANY IN OPPOSITION

OPINION BELOW

The decision of the Court of Appeals appears as pages 7-16a of Petitioners' Appendix C as is reported officially at 696 F.2d 500 (1982).[1]

JURISDICTION

The judgment of the Court of Appeals was entered on December 22, 1982. Rehearing was denied on January 20, 1983 (Petit. App. 17-18a). The petition for Writ of Certiorari was filed on April 19, 1983. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

The Statement Of The Case contained in the Brief of Respondent Union In Opposition, which is not materially different from the Statement Of The Case as set forth on pages 4-5 of the Petition for Writ of Certiorari is accurate and hereby adopted by Respondent Company.

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[1] At the time of the filing of the *Stevens* case Respondent Company was known as Gateway Transportation Company. Thereafter its name was changed to Maislin Transport of Delaware, Inc., which is controlled by Maislin Transport, Ltd., Respondent in the *Evans* case.

REASONS FOR DENYING THE WRIT

The Supreme Court in *Hoosier Cardinal & Mitchell* held that in determining which Statute of Limitation to apply where an employee seeks to vacate an arbitration decision arrived at pursuant to a collective bargaining contract, courts should seek those Statutes most analogous to the cause presented, keeping in mind that national interests require the "relatively rapid disposition of labor disputes".[2] The Seventh Circuit Court of Appeals in its decision[3] considered the applicability of the various Statutes referred to in Appendices E through I of the Petition for Writ of Certiorari. In its decision it clearly follows the Supreme Court's direction to apply the statute most analogous to the cause before the Court and in keeping with the federal policy of resolving labor disputes in an expeditious manner.

The Seventh Circuit has considered and rejected Petitioners' argument that one of the Statutes referred to applies directly to their cause of action. Chapter 83, Section 16 Illinois Statutes[4] is not an applicable and specific statute of limitations. Petitioners' causes are not actions "on awards of arbitration". In addition, Chapter 83, Section 16, does not meet one of the important criterion of federal policy, namely its application would not result in the rapid disposition of labor disputes.

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[2] *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56 at 63 (1981), *International Union, UAW v. Hoosier Cardinal Corp.*, 368 U.S. 696 at 707 (1976).

[3] Appendix C to Petition for Writ of Certiorari.

[4] Appendix G to Petition for Writ of Certiorari.

The fact that the Illinois legislature has enacted Chapter 10, Section 112 Illinois Statutes[5] covering the vacating of an award, clearly denotes that it distinguishes the vacating of an award from actions "on awards of arbitration". Just as Chapter 83, Section 16 is not an applicable and specific statute of limitations, Chapter 10, Section 112 and Section 10(b) of the National Labor Relations Act (29 U.S.C. § 160(a) and (b)), are not applicable and specific statutes of limitations. The Seventh Circuit was therefore required to seek from available statutes of limitations the one most analogous to the cause presented and the statute or statutes most likely to effectuate federal policy relative to labor disputes.

Clearly the Illinois statute which refers to the vacating of awards as differentiated from the Illinois statute referring to an action "on an award" is more analogous to Petitioners' stated causes of action. It also most closely comports with federal policy relating to the need for the expeditious disposition of labor disputes. Section 10(b) is the Statute of Limitations contained in the National Labor Relations Act relating to the bringing of charges before the N.L.R.B. by employees alleging that discipline or discharge has been for reasons other than just cause.[6] Even if held applicable, the Petitioners' causes of action would be barred by it also.

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[5] Appendix F to Petition for Writ of Certiorari.

[6] The grounds for unfair labor practices are set forth in the Act and are not relevant here other than that they are specific reasons for disciplinary action other than just cause and are therefore analogous to claims brought by employees based on collective bargaining contracts which also allege that the discipline complained about is for reasons other than just cause.

It is most respectfully submitted that Petitioners have failed to state grounds upon which their Petition may be granted pursuant to Rule 17 of the Supreme Court's Rules. There is no conflict set forth between the various Circuits regarding compliance with the Supreme Court's decision in *Mitchell*. While other Circuit Courts may have been able to locate available statutes in pertinent states more specifically applicable to the cause presented there, the Seventh Circuit in this case, having reviewed all available Statutes of Limitations, did in fact apply the most analogous statutes and the ones most likely to result in the expeditious disposition of labor disputes in keeping with federal policy. No question is presented in this case which warrants further proceedings before the Supreme Court. In that connection the issues raised in *Flowers*[7] and *Del Costello*[8] which are already pending before the Supreme Court, are dissimilar from those raised by the Petitioners in the instant matter. Indeed, Petitioners do not even refer to *Flowers* and *Del Costello* in their Petition.

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[7] *Flowers v. Local 2602 of United Steelworkers*, 671 F.2d 87 (2nd Cir. 1981), *cert. granted*, ... U.S. ....., 103 S. Ct. 442, 74 L. Ed. 2d 599 (1982).

[8] *Del Costello v. International Brotherhood of Teamsters*, 679 F.2d 879 (4th Cir. 1982), *cert. granted*, ... U.S. ....., 103 S. Ct. 442, 74 L. Ed. 2d 599 (1982).

CONCLUSION

Wherefore, respondent company respectfully submits that the Petition for writ of certiorari should be denied.

Respectfully submitted,

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FILED
MAY 19 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1702

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ROBERT L. STEVENS,

Petitioner,

VS.

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Respondents.

— Consolidated With —

AIELT EVANS,

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Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF RESPONDENT UNION IN OPPOSITION

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QUESTION PRESENTED

Whether the Court below properly chose the 90-day statute of limitations found in the Illinois Uniform Arbitration Act, Ill. Rev. Stat. ch. 10 § 112(b), to bar Petitioners' actions brought under § 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, alleging a breach of the duty of fair representation and breach of a collective bargaining agreement, when Petitioners concede that their causes of action against both the Respondent Union and Company should be identical for limitations purposes and are properly characterized as actions to vacate an arbitration award under *United Parcel Service, Inc.* v. *Mitchell*, 451 U.S. 56 (1981).

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF RESPONDENT UNION IN OPPOSITION

OPINION BELOW

The decision of the Ccurt of Appeals appears as pages 7-16a of Petitioners' Appendix C and is reported officially at 696 F. 2d 500 (1982).

JURISDICTION

The judgment of the Court of Appeals was entered on December 22, 1982. Rehearing was denied on January 20, 1983 (Petit. App. 17-18a). The petition for writ of certiorari was filed on April 19, 1983. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

A.

Proceedings Below

Both actions originated in state court and were removed to federal court. The complaints alleged that the Respondent, Gateway Transportation Company (or Maislin Transport, Ltd.) (the "Company") wrongfully terminated Petitioners from their employment and that the Respondent, Local 710, International Brotherhood of Teamsters (the "Union") failed to properly represent the Petitioners in grievance proceedings under a collective bargaining agreement. The District Court, in two separate proceedings, granted summary judgment and found both actions untimely filed. The Court of Appeals consolidated the cases. On December 22, 1982, the Court of Appeals issued its decision and judgment affirming the grants of summary judgment (Petit. App. 7-16a, 696 F. 2d 500). Rehearing was denied January 20, 1983 (Petit. App. 17-18a).

B.

Statement of Facts

Respondents are parties to a collective bargaining agreement containing a grievance procedure. Under that procedure, a majority decision of a joint committee is final and binding.

On May 10, 1977, the Company terminated Petitioner Stevens for refusing to take a blood alcohol test. On June 2, 1977, the joint committee upheld the discharge. Petitioner Stevens did not file his action until May 10, 1979 — almost two years after the joint committee's decision.

On April 2, 1979, Petitioner Evans was terminated for alleged intoxication. On May 31, 1979, the joint committee upheld the discharge. Evans did not file his action against the Company until April 20, 1981 and did not add the Union as a party until October 21, 1981 — more than two years after the joint committee's decision.

REASONS FOR DENYING THE WRIT

A.

Petitioners Have Conceded The Issues Currently Pending Before This Court.

Petitioners have conceded the issues currently pending before this Court. Petitioners do not dispute that the proper characterization of their duty of fair representation — breach of contract action under § 301, 29 U.S.C. § 185, against both Respondents is one to vacate an arbitration award under authority of *United Parcel Service, Inc.* v. *Mitchell,* 451 U.S. 56 (1981) (Petition at i-ii, 5-6).[1] Petitioners complain only of the choice of which arbitration limitations should apply to their claim: the short 90-day limitation found in the Illinois Uniform Arbitration Act, Ill. Rev. Stat. ch. 10 § 112(b) for vacating arbitration awards (as applied by the Court below) or the lengthy five year limitations provision found in the "catch all"

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1. "[Petitioners]urged that the Illinois five year statute of limitations, which applies to awards of arbitration, should be applied" (Petition at 5). The Court below noted this concession. 696 F. 2d at 504.

limitations provision of Ill. Rev. Stat. ch. 83 § 16 for "actions . . . on awards of arbitration." Petitioners do *not* contend, as in *Flowers* v. *Local 2602 of United Steelworkers*, 671 F. 2d 87 (2nd Cir., 1981), *cert. granted*, —— U.S. ——, 103 S. Ct. 442, 74 L. Ed. 2d 599 (1982) and *Del Costello* v. *International Brotherhood of Teamsters*, 679 F. 2d 879 (4th Cir. 1982), *cert. granted*, —— U.S. ——, 103 S. Ct. 442, 74 L. Ed. 2d 599 (1982) that some other state statute should apply to characterize their cause of action, or that the statute of limitations for the claims against the Company and the Union are different.[2] They simply agree that for characterization purposes, their action is closely analogous to an action to vacate an arbitration award, *Mitchell*, 451 U.S. at 61, n. 3, and that the same limitations period should apply to both claims.

Having conceded the issues of characterization and identical periods of limitations, the issue of which Illinois arbitration provision should apply is not worthy of a grant of certiorari. There is no split in the circuits on the issues raised by Petitioners and the issues raised by Petitioners do not conflict with this Court's *Mitchell* decision.

B.

The Five Year Limitations Period Urged By Petitioners Is Contrary To Federal Policy.

The five year limitations period of Ill. Rev. Stat. ch 83 § 16 urged by Petitioners and rejected below, 696 F. 2d at 503, is contrary to the federal policy of the " 'rapid disposition of labor disputes.' " *Mitchell*, 451 U.S. at 63. The 90-day limitations period found in the Illinois Uniform Arbitration Act satisfies that policy.

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2. Petitioners do not even mention *Flowers* and *Del Costello* in their Petition.

C.

Ill. Rev. Stat. Ch. 83 § 16 Is Not A Specific Statute Of Limitations For Employee Challenges To Awards Of Joint Panels Under Collective Bargaining Agreements.

The general provisions of Ill. Rev. Stat. ch. 83 § 16 for "actions on . . . awards of arbitration" is not, as Petitioners urge (Petition at 7-9), a "*specific* . . . statute of limitations for employee challenges to awards of a joint panel or similar body. . .," *Mitchell*, 451 U.S. at 64, justifying the use of a lengthy five year limitations period [emphasis added]. The Court below rejected this argument. 696 F. 2d at 504-05. Rather, ch. 83 § 16 is a vague, general catch all provision enacted by the Illinois legislature in 1872, long before the enactment of § 301 in 1947 and long before the enactment of the Illinois Uniform Arbitration Act in 1961 which provides a detailed statutory scheme for vacating arbitration awards. *Mitchell, id.*

D.

The Exclusionary Language Found In The Illinois Uniform Arbitration Act Does Not Prevent Application Of That Statute.

The exclusionary language found in the Illinois Uniform Arbitration Act, Ill. Rev. Stat. ch. 10 § 112(e), exempting "... any award entered as a result of an arbitration agreement which is part of or pursuant to a collective bargaining agreement. . ." does not change the result as urged by Petitioners (Petition at 11). *Mitchell* only requires that the statute chosen be "closely analogous," and not identical. Indeed, in *Mitchell*, this Court rejected the same argument noting that the New York arbitration act was

applicable notwithstanding the fact that the plaintiff could not bring a suit under that statute. 451 U.S. at 61, n. 3.[3]

E.

Petitioners' "Special Grounds" Argument Does Not Defeat The Choice Of The Limitations Period Found In The Illinois Uniform Arbitration Act.

Petitioners' argument (Petition at 9-10) that the specific grounds for vacating an award under the Illinois Uniform Arbitration Act do not appear in this case (*id.* at 10) is simply wrong. The Court below rejected this argument, 696 F. 2d at 504, n. 4. Petitioners allege the Union breached the duty of fair representation. In order to establish a breach, Petitioners need to show "arbitrary or bad faith conduct on the part of the union," *Vaca* v. *Sipes*, 386 U.S. 171, 193 (1966) and must show "substantial evidence of fraud, deceitful action or dishonest conduct," *Humphrey* v. *Moore*, 375 U.S. 335, 348 (1964). See also, *Motor Coach Employees* v. *Lockridge*, 403 U.S. 274, 299 (1971). They need to show the same grounds necessary to vacate an award under the Illinois Uniform Arbitration Act. Further, this assertion does not prevent the characterization from being "closely analogous" under *Mitchell*.

F.

Petitioners' § 10(b) Argument Is Inapplicable To This Case.

Petitioners' assertion (Petition at 13-15) that the six month limitation found in § 10(b) of the National Labor

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3. The Court below noted other decisions where the state arbitration act, by its terms, did not apply to an action to vacate an arbitration award but the limitations period of that act was nevertheless applied. 696 F. 2d at 504.

Relations Act, 29 U.S.C. § 160(b), is inapplicable since it does not, by its specific terms, concern "accusations of intoxication on the job" (Petition at 13), is specious at best. The Court below found that Petitioners' two year old claims were barred by the limitations provisions of the Illinois Uniform Arbitration Act and, in passing, also noted that the claims were barred by § 10(b)'s limitations period as well. Therefore, it was simply not necessary for the Court below to decide which of these two statutes applied. 696 F. 2d at 505. The application or non-application of § 10(b)'s six month limitations period will not revive Petitioners' two year old claims.

CONCLUSION

Wherefore, for the above reasons, the Respondent Union submits that the Petition should be denied.

Respectfully submitted,

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Office - Supreme Court, U.S.
FILED
JUN 4 1983
ALEXANDER L. STEVAS,
CLERK

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On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN REPLY TO BRIEF OF RESPONDENT COMPANY

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On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

---

BRIEF IN REPLY TO BRIEF OF RESPONDENT COMPANY

REASONS IN REPLY FOR GRANTING THE WRIT

The Petitioners' Brief in Reply to the Union's Brief applies to many of the points raised by the Company in its Brief, and, to avoid duplicity in reading by the Court, is hereby adopted in this Brief.

The Company emphasizes, "relatively rapid disposition of labor disputes." In *Mitchell*,[1] the Supreme Court was fully aware of "relatively rapid disposition" when it stated, "Obviously if New York had adopted a specific 6 year Statute of Limitations for employee challenges to awards of a joint panel or similar body we would be bound to apply that Statute under the reasoning of *Hoosier Cardinal*." Therefore, the Supreme Court places more emphasis on this rule than the doctrine of "relatively rapid disposition."

Referring to Supreme Court Rule 17, it is obvious that where the Seventh Circuit and other circuits have rendered decisions contrary to the decision in *Mitchell*, there is a compelling ground for granting a Writ of Certiorari.

The Company refers to *Del Costello v. International Brotherhood of Teamsters*, 679 F.2d 879, where certiorari has been granted. This case deals chiefly with *Mitchell*, and the retroactivity of a Statute of Limitations.

The Company also refers to *Flowers v. Local 2602*, 671 F.2d 87, where certiorari has been granted. This case also deals chiefly with *Mitchell*, and we respectfully urge this Court to restate and reaffirm *Mitchell* in the above cited cases in the case at bar.

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[1] *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56.

CONCLUSION

For the foregoing reasons, Petitioners respectfully ask this Honorable Court to grant its Writ, directed to the United States Court of Appeals for the Seventh Circuit, and, upon doing so, to reaffirm *Mitchell* and to reverse the decisions of the Seventh Circuit and to remand these cases for trial.

Respectfully submitted,

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Office - Supreme Court, U.S.
FILED
JUN 4 1983
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CLERK

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BRIEF IN REPLY TO BRIEF OF RESPONDENT UNION

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Labor Management Relations Act (referred to as Section 10[b]) Title 29 Sect. 160(a)(b) 4

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BRIEF IN REPLY TO BRIEF OF RESPONDENT UNION

REASONS IN REPLY FOR GRANTING THE WRIT

Petitioners' reply to the Union's brief is identical with the reply to the Company's brief, with the exception of references to the cases of *Flowers* and *Del Costello*, which were mentioned in the Company's brief, and to which we will reply in our Reply to the Company's brief.

Respondents, the employer and the Union, are combined in their efforts to defeat the rights of the Union—paying members, and one is as anti-workman as the other, and their approaches are similar—they both would have *Mitchell*[1] reversed. The language in *Mitchell*, that states on page 64 of the opinion, "Obviously, if New York had adopted a specific 6 year Statute of Limitations for employee challenges to awards of a joint panel or similar body, we would *be bound* to apply that statute under the reasoning of *Hoosier Cardinal*" (Emphasis supplied) is repugnant to the employer-Union combine in the case at bar; they would have the Supreme Court reverse.

A revisitation of *Mitchell* is urged by all parties in their briefs. The Union and employer agree that the Illinois Statute of Limitations should apply. But they make no argument in response to our undisputed statement that the 90 day statute, *by its own provisions*, shall not apply. The 90 day Statute of Limitations specifically states (Chapter 10, Section 112, Illinois statutes):

> "(e) Nothing in this Section or any other Section of this Act shall apply to the vacating, modifying, or correcting of any award entered as a result of

[1] *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56.

> an arbitration agreement which is part of or pursuant to a collective bargaining agreement; and the grounds for vacating, modifying or correcting such an award shall be those which existed prior to the enactment of this Act."

This Section 112 is labeled, "Vacating an Award." Now Chapter 83, Section 16, Illinois Statutes, is entitled "Oral Contracts, Arbitration Awards, Damage to Property . . . ."

The Respondents refer to this as a "catch all" provision. Section 112, the section that the employer and the Union combine to rely on, is entitled "Vacating an Award."[2] Chapter 83, Illinois Statutes, Section 16, the applicable statute, is entitled "Oral Contracts, Arbitration Awards . . . ." Both refer to arbitration awards. Section 16, Chapter 83, specifically refers to arbitration awards, and specifically, without any exceptions as are stated in Chapter 10, Section 112, states a limitation without the exceptions above stated in Section 112. Section 16, Chapter 83, states no exceptions. Section 112, Chapter 10, specifically states that *the act does not apply where there is an arbitration agreement, as there undeniably was in the case at bar.*

Section 16, Chapter 83, Illinois Statutes, entitled "Oral Contracts-Arbitration Awards-Damage to Property-Possessory Actions-Civil Actions" is no more of a "catch all" phrase, as indicated by the Union, in its defense against laborers who are left without representation, as are the provisions of Section 112, Chapter 10, Illinois Statutes, entitled, "Vacating an Award", and which specifically states at Section (e) that "Nothing in this Section . . . shall apply to the vacating, modifying, or correcting of

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[2] Illinois Statutes, Chapter 10, Section 112.

any award entered as a result of an arbitration agreement . . ." There was indisputably an arbitration agreement and an arbitration award in the case at bar.

Mitchell holds that the specific Illinois 5 year Statute of Limitations must apply. Section 112, which provides that the Act shall not apply to the vacating of an award where there is an arbitration agreement, and which applies only to five instances[3] cannot, under *Mitchell*, apply.

Mitchell meets the problem where a dues-paying member is abandoned by his Union, and, perchance, through some source, later learns that he has a remedy and a limitation, which the Union and employer have kept within the secrets of their combine.

The Union makes reference to Section 10(b) (Title 29, Sect. 160(a)(b)).

> Section 10(b) does not give any of the rights and remedies contained in Section 301, but limits its application to cases where (1) there has been interference with the right to organize, (2) there has been discrimination, or (3) there has been a refusal to bargain collectively. Section 10(b) does not, therefore, apply to this case.

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[3] § 112. Vacating an award.

(a) Upon application of a party, the court shall vacate an award where:

(1) The award was procured by corruption, fraud or other undue means;

(2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any one of the arbitrators or misconduct prejudicing the rights of any party;

(3) The arbitrators exceeded their powers;

(4) The arbitrators refused to postpone the hearing . . . .

(5) *There was no arbitration agreement* . . . .

(Emphasis supplied)

CONCLUSION

For the foregoing reasons, Petitioners respectfully ask this Honorable Court to grant its Writ, directed to the United States Court of Appeals for the Seventh Circuit, and, upon doing so, to reverse the decisions of that Court and to remand these cases for trial.

Respectfully submitted,

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